though adhering in the main to the principles formerly expressed, practically take the position of Mr. Justice Barker. In certain emergencies, they say, the government alone might be able to obtain fuel, and might then constitutionally buy and sell for the relief of the community. Mr. Justice Loring refuses to join in this qualification of the former opinion. The view taken by Mr. Justice Holmes has now no advocate on the bench.

The admission by the court that under the circumstances described municipalities might establish coal yards seems of little practical importance. Such a situation would rarely occur and would of necessity be very temporary; indeed, Mr. Justice Loring thinks it impossible. The main significance of the opinion lies in the continued and vigorous opposition of the court to radical extension of the doctrine of municipal ownership. The growing popularity of that doctrine has been attested by recent municipal elections. The extent to which popular feeling, if uncontrolled by the courts, is likely to carry it is shown by the experience of British cities. The corporation of Glasgow now owns and in many instances operates not only gas and water plants and street railways, but also scores of ordinary businesses, such as laundries and retail stores. Whether the courts may restrain and overrule the legislature in this matter, and, if they may, where they will draw the line, are therefore questions of great and increasing importance.

The legal question presented obviously is not whether such a change in our theory of the state is advisable, but whether it is constitutional. That the courts will hold it unconstitutional for a state to enter into ordinary private callings seems sure. It is probable that they will lay down some such test as "virtual monopoly," permanent control of the supply or service. See 16 HARV. L. REV. 73; *cf.* *State* v. *City of Toledo*, 48 Oh. St. 112. When a business supplying a general public need is of such a nature that a substantial monopoly is necessary or inevitable either from economic reasons or because required by the public welfare, then the state may regulate it and even engage in it. But it cannot spend the public money in operating private industries that may be well left to the regulation of competition. Under the test suggested the mining of coal might be considered a public calling, but the retail selling could not be so held. Monopolistic combinations of coal dealers, however, while not economically necessary may be so easily formed and maintained because of the absolute control of the supply by a few men that the business might be distinguished from the sale of ordinary articles. But the actual situation does not seem to warrant such a dangerous extension of the class of public callings. If the mine operators should extend their control over the entire distribution of the coal, control of the retail selling by municipalities might be considered constitutional but would be of little benefit. If the state of Pennsylvania acquired and operated the coal mines, there would be no reason why Massachusetts or its municipalities should control the distribution. It should be noticed that the court in the principal case is not rendering a decision, but is merely giving an advisory opinion. It might be more reluctant to hold actual legislation unconstitutional, but there is nothing to indicate that it would withdraw from its present position.

INTERESTED DIRECTOR'S RIGHT TO VOTE AS STOCKHOLDER. — The validity of the recent $200,000,000 loan to the United States Steel Corporation has again been contested, this time on the ground that the private

interest of certain directors barred their votes as stockholders. A tentative agreement for the loan from the Morgan Company was negotiated by the directors of the Steel Corporation and submitted to its stockholders. Several of these directors were members of the Morgan Company and of the syndicate which was to act as surety in the transaction, and it was conceded that without the votes on the shares controlled by such directors the necessary two-thirds vote for validating the agreement would not have been obtained. The court, in sustaining the transaction, appears to rest its argument solely upon the general proposition that in the absence of fraud private interest is no bar to a stockholder's right to vote. *Hodge* v. *U. S. Steel Corp.*, 54 Atl. Rep. 1 (N. J., C. A.) Another general rule of law, however, declares that when directors act as directors they cannot make a binding contract in which one of their number has a private interest. Irrespective of actual fraud, such a contract is voidable by seasonable action on the part of the corporation. *Pearson* v. *Concord R. R. Co.*, 62 N. H. 537. See 15 HARV. L. REV. 672. The question is therefore raised whether these two rules become inconsistent when, as in the principal case, a stockholder is also a director; and if so, which rule should be modified?

A consideration of the facts of two leading cases upon the subject shows conclusively that the rules are in substance conflicting. See *Beatty* v. *N. W. Transport Co.*, L. R. 12 App. Cas. 589; *Bjorngaarrd* v. *Goodhue County Bank*, 49 Minn. 483. In each case the corporation was considering the ratification of an existing though voidable contract made by interested directors, who, as a matter of fact, possessed a majority of the stock. To allow directors to vote under such circumstances is evidently to make ratification inevitable, and thus to deprive the transaction of any actual voidability. Yet the court allowed their votes under the general rule that interest is no bar to a stockholder's vote. By thus applying this rule the court completely nullified the effect of the other general rule which declares that contracts made by interested directors should be voidable. The latter rule seems to demand an entirely disinterested vote by the corporation on the question of ratification, and hence whenever an interested director is allowed to vote in the stockholders' meeting a modification of this rule results.

Granting, then, that the two rules may come into conflict, it is to be noted that the decisions cited represent the weight of authority and agree with the principal case in asserting that whatever be its effect upon other rules, the rule which declares interest no bar to the stockholder's vote is to remain unmodified. Strong reasons exist, however, for doubting the soundness of this view. The rule as to voidability of directors' contracts is highly salutary and should be made effective. It gives the corporation a free hand in discarding questionable transactions; whereas the prevailing view would frequently necessitate proof of actual fraud. This burden would rest heavily upon an objecting stockholder, since he lacks the intimate knowledge of corporate affairs possessed by a director. On the other hand, if the director's interest were made a bar to his right to vote as shareholder, no radical change in the general rule as to the stockholders' right to vote would result. The latter rule is based upon the inexpediency of entering upon an investigation as to the private interests of a great number of stockholders in order to determine the validity of corporate transactions. Under the change proposed, however, though some investigation would be necessary, it would be limited to the interests of directors, a very narrow class of persons.

It would thus seem that a director's interest should be made an exception to the general rule that interest is never a bar to a stockholder's vote.

This view has the support of an able text-writer. See TAYLOR, CORP. 5th ed., 559 b. This should apply under all circumstances, even though the corporation is not voting to ratify an existing though voidable contract, but, as in the principal case, is voting to validate an entirely void agreement

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TRANSFER OF TITLE TO PERSONALTY WHERE SOMETHING REMAINS TO BE DONE. — The intention of the parties is generally admitted to be the controlling factor in deciding when the title to personal property passes to a purchaser. See *Martineau* v. *Kitching*, L. R. 7 Q. B. 436. To obtain some uniformity in decisions, the courts have established artificial rules to determine that intention, the principal one of which is that when something remains to be done to the goods there is a presumption that title has not passed. This is properly a presumption of fact which may be rebutted if a contrary intention be shown, although in England in the special case of goods which are to be separated from a greater mass, it has been held to be a rule of law. *Graff* v. *Fitch*, 58 Ill. 373. See *Austen* v. *Craven*, 4 Taunt. 644.

In England the presumption is raised only when the act is to be done by the vendor. *Turley* v. *Bates*, 2 H. & C. 200. Probably this distinction arose from two circumstances. First, if what remains to be done is vital, as completion of goods before delivery, it is much more likely to be done by the vendor. Second, if the act to be done is to be performed by the vendee, it will probably be preceded by delivery to him, and that is in itself enough to show that title has passed. *Haxall, etc., Co.* v. *Willis*, 15 Gratt. (Va.) 434. In the absence of these accompanying circumstances there appears to be little weight in this English distinction, and it is not generally adopted in this country. *Ballantyne* v. *Appleton*, 82 Me. 570.

It is obvious that among the things to be done before a transaction is complete, there are some which are so vital in their nature that it is almost certain that sellers and purchasers will not intend to pass title until they are done. The separation of goods from a greater mass is an example of this. The parties might sell an undivided interest in the mass, but they will in general intend a sale of an ascertained quantity. *Kimberly* v. *Patchin*, 19 N. Y. 330; *Warren* v. *Buckminster*, 24 N. H. 336. Consequently they will intend that the goods shall be separated before title passes. Again, where the goods have to be changed or altered in some way to put them in a condition to fulfil the terms of the sale, title will usually not be intended to pass until this is done. *West Jersey, etc., Co.* v. *Trenton, etc., Co.*, 32 N. J. Law 517. The same would seem to be true where the goods must be inspected to ascertain whether they conform to the requirements of the contract.

On the other hand, there are many cases where the only thing to be done is some slight act, such as measuring or weighing the goods in order to determine the exact price to be paid. Thus in a recent North Carolina case the principal thing remaining to be done was to measure the wood sold. No notice was taken of the relative unimportance of the act, and the court applied the usual presumption. *Porter* v. *Bridgers*, 43 S. E. Rep. 551. Yet when parties contract to sell a definite mass of goods which are ready for delivery, it is probable that they intend to regard the goods as the purchaser's from that time, even though the exact price is to be determined later. A few cases have therefore taken the view that in trans-